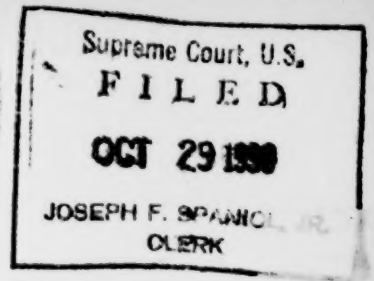


90-706①



No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990

ENID R. BRAHMS, Petitioner,

v.

MICHAEL ALAN SCHWARTZ, Grievance
Administrator, State of Michigan
Attorney Grievance Commission,
Respondent.

PETITION FOR WRIT OF CERTIORARI

Enid R. Brahms
In Pro Per
20 S. Gratiot, Ste. 200
Mt. Clemens, MI 48043
(313) 769-2039

Attorney for Petitioner

QUESTIONS PRESENTED

1. In an attorney disciplinary proceeding, is there a denial of due process to the attorney when the grievance administrator fails to produce for testimony and cross-examination a material witness to the matter, which witness was not only the wife of the complainant and primary contact with the attorney, but also a person with respect to whom the attorney was charged with not making verbal or written communications, and which person was not named as a complainant?

2. Was Petitioner denied due process of law by being charged and disciplined with respect to a non-viable legal claim in which the statute of limitations had run with respect to any alleged claim by complainant prior to the time complainant had any contact with Petitioner?

3. Are the Michigan Attorney Disciplinary Rules void for vagueness as a matter of law making them uncertain, unfair and open to arbitrary and capricious interpretations such that in their application they denied Petitioner due process and equal protection under the law?

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Attorney for Petitioner

OPINIONS BELOW

The opinions or orders below, and which appear in the Appendix hereto, are as follows:

1. Report of Oakland County [Michigan, Attorney Discipline Board] Hearing Panel No. 24, dated December 2, 1988 (A - 1)

2. State of Michigan, Attorney Discipline Board Order of Reprimand, dated, December 2, 1988 (A - 8)

3. State of Michigan, Attorney Discipline Board, Order Affirming Hearing Panel Order of Reprimand, dated July 3, 1989 (A - 11)

4. State of Michigan, Attorney Discipline Board, Order Denying Respondent's [Petitioner's] Motion for Reconsideration, dated January 16, 1990 (A - 17)

5. Opinion of the Michigan Supreme Court, dated May 22, 1990, denying Petitioner's Delayed Application for Leave to Appeal (A - 22)

6. State of Michigan, Attorney Discipline Board, Notice of Reprimand, dated May 31, 1990 (effective May 22, 1990) (A - 24)

7. Opinion of the Michigan Supreme Court, dated July 31, 1990, denying Petitioner's Motion for Reconsideration (A - 29)

JURISDICTION

Petitioner's Application for Leave to Appeal a decision of the Michigan Attorney Discipline Board entered originally on December 2, 1988 was denied by the Michigan Supreme Court on May 22, 1990. A timely motion ofr reconsideration was denied on July 31, 1990, and petition for certiorari was filed within 90 days of that date. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1257 (a).

CONSTITUTIONAL PROVISIONS

Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Said section reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (emphasis added).

DISCIPLINARY RULES

Petitioner's conduct was held to have violated the following disciplinary rules:

(a) MCR 9.104(2) and (4):

"The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship:

. . . .

(2) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;

. . . .

(4) conduct that violates the standards of professional responsibility adopted by the [Michigan] Supreme Court;

. . . .

(b) DR 7-101 (A)(2):

"(A) A lawyer shall not intentionally:

. . . .

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may

withdraw as permitted under DR 2-110,

. . . .

(c) DR 2-110 (A)(2):

"

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including due notice to his client, allowing time for employment of other counsel delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

CITATIONS

Citations to the Michigan Court Rules, dealing with disciplinary matters, and cited as MCR__, and citations to the ABA Disciplinary Rules as adopted by the Michigan Supreme Court are cited DR__. Citations to the record and cited as (Record__not yet prepared.)

Citations to the Appendix attached hereto shall be as follows: (A-__).

RAISING THE FEDERAL QUESTIONS

Petitioner raised the matter of the denial of due process and equal protection first in Petitioner's Motion for Reconsideration of the seven member Michigan Attorney Discipline Board's affirmation (2 members dissenting) (A-11) of the Oakland County Hearing Panel's decision recommending a reprimand against Petitioner. Petitioner's motion was denied, without formal comment on due process or equal protection.

Petitioner's motion stated, amongst other things:

"That the hearing panel order of December 2, 1989 failed to state what conduct was prohibited or proscribed, and the rules fail to specifically state what conduct is required; they are vague."

"It is believed that there were irregularities in the investigation...."

"That the Attorney Discipline Board did not comply with the standards for review as required by law."

"There were irregularities as to the requirement of the complainant's wife [to testify] who it is believed was responsible and wrote the complaint. Much of the decision was based upon what she may have heard, said or done."

"That the general purpose to protect the public did not contemplate to vest unwarranted and arbitrary power in an administrative office."

"The statute and rules under which the board and panel proceeded are unconstitutional."

"There are wide disparities and complete lack of uniformity in procedures."

"[Petitioner] has been deprived of due process of law."

"[Petitioner] has been denied equal protection of the law.:

Petitioner also sought in her

Application for Leave to Appeal to the Michigan Supreme Court, the following:

"Whether the inability of [Petitioner] to confront and cross-examine Complainant's wife was prejudicial to [Petitioner], lacked fundamental unfairness and constituted a denial of due process."

"Whether documents admitted as evidence by the hearing panel and now missing from the Attorney Grievance Board file in this case is prejudicial to [Petitioner] and a denial of due process."

— The Michigan Supreme Court denied Petitioner's Application for Leave to Appeal (one justice dissenting) without formal comment as to the issues above. The dissenting justice stated that the case should be sent back to require Complaint's wife to testify. (A- 22).

In Petitioner's Motion for Reconsideration of the Michigan Supreme Court's decision, Petitioner stated, amongst other things, the following:

"From the record, apparently there was prejudice which favored the male witness/complainant over the female witness/appellant, and there was also bias exhibited by appellant's attorney who referred to appellant in May 24, 1989 before the Attorney Discipline Board (p. 4, l. 21-22) as follows: "You can see that she's not a spring chicken". Such attitude affected his representation of appellant in a negative way and affected the outcome of the case."

"That the proper and necessary party to the suit was not before the court, the order therefore must be reversed. The complainant's wife had virtually all of the communication with appellant yet she was not listed as the complainant even though the hearing panel found that Appellant had failed to satisfactorily respond to Mrs. Patrick. She should have been a complaining party, if anyone was a proper complaining party, and the order must therefore be reversed."

"Because of the potential for prejudice, and the harm that can result in the enforcement of the disciplinary rules, and the

STATEMENT OF THE CASE

The petitioner, Enid R. Brahms, is an attorney who was admitted to practice in the State of Michigan in May, 1982, when petitioner was 42 years old.

Petitioner was a divorced mother of three children, a former schoolteacher, and had been engaged in the child care business for approximately 13 years. Petitioner did not begin the full-time practice of law until September, 1985, and as a sole practitioner had a general practice, concentrating in matter of family law, criminal appointments and general business matters.

On December 17, 1985, Petitioner met at her office with Tommy G. Patrick and his wife, Mary Patrick, regarding certain alleged employment rights of Mr. Patrick. Mr. Patrick had been laid off from

Chrysler Corporation ("Chrysler") on September 1, 1979, and as a member of the United Automobile Worker's Union ("UAW") claimed that by 1983 he should have been called back to work pursuant to certain "call-back" rights. He eventually was rehired on June 10, 1985, laid off again shortly thereafter, and his call-back rights were no longer available to him at either time.

In 1983 or 1984, Mr. Patrick and his wife had sought assistance of several other attorneys regarding his alleged employment rights, but none would take his case. Mr. Patrick also sought assistance of the UAW, but to no avail. During this time and at the time Mr. and Mrs. Patrick first met with Petitioner in December, 1985, Mr. Patrick had a personal injury lawsuit pending

with another attorney. Mr. Patrick was not unfamiliar with attorneys.

During a disciplinary hearing against Petitioner, Mr. Patrick testified that the purpose of his first office visit with Petitioner was to get at the UAW. Petitioner testified that she told Mr. Patrick and his wife that she did not sue unions which Mr. Patrick denied. Mr. Patrick later testified that his primary complaint was with his call-back rights at Chrysler.

At the time Petitioner met with the Patricks on December 17, 1985, any actions by Mr. Patrick against Chrysler Corporation or the UAW regarding Mr. Patrick's alleged employment rights were time-barred by the applicable statute of limitations, unbeknownst to Petitioner at that time.

A Contingent Fee Agreement was signed by Mr. Patrick and Petitioner at the initial meeting, a copy of which is set forth in full in the Appendix (A- 33), the pertinent terms of which are as follows:

"The undersigned part(y)(ies) herewith retain(s) the law firm of ENID R. BRAHMS, P. C. to prosecute on behalf of the undersigned a claim which the undersigned assert(s) against _____ which arises out of an injury sustained on or about _____."

The blanks were not filled in, but directly beneath this introductory paragraph were written the words "relative to employment rights", in Petitioner's handwriting.

Petitioner never received any money from the Patricks, and never billed

them for any costs or services.

Mr. Patrick and his wife brought original documents to the initial meeting with Petitioner. Mr. Patrick testified that these documents were never returned by Petitioner prior to the time he filed a Request for Investigation with the Michigan Attorney Grievance Commission, whereas Petitioner testified that she made copies of the originals for herself and gave the originals back to Mr. Patrick at the original meeting.

Count III of the Attorney Grievance Commission's Complaint against Petitioner, alleging the failure of Petitioner to deliver papers belonging to Mr. Patrick, and alleging professional misconduct in violation of various rules, was held to be not substantiated by the evidence. In this respect, although

Mr. Patrick testified that Petitioner did not return to him the originals of certain documents which was contradicted by Petitioner, he nevertheless testified that certain of the originals were in his or his wife's possession. Petitioner, when first asked by the Attorney Grievance Commission about such documents and prior to the institution of grievance proceedings, had sent to the Attorney Grievance Commission copies of her copies of such documents, which copies then were sent by the Attorney Grievance Commission to Mr. Patrick. Petitioner never sent originals to Mr. Patrick or to the Attorney Grievance Commission. Nevertheless, Mr. Patrick had originals of such documents in his possession.

If Mr. Patrick had originals of the documents, which he claimed were given to Petitioner at their initial meeting, he only could have gotten the same from Petitioner at such initial meeting, when Petitioner made copies thereof.

Count III of the Complaint by the Michigan Attorney Grievance Commission, alleging that Petitioner had failed

"To deliver to Patrick all papers and property to which he was entitled prior to [Petitioner's] admitted discontinuance of employment; [and] to promptly deliver to Patrick as requested by him the documents in the possession of [Petitioner] which Patrick is or was entitled to receive."...

and which was allged to constitute professional misconduct, was found by the Michigan Attorney Grievance Commission Hearing Panel not to have been substantiated by the evidence.

Furthermore, Count II of the Complaint, alleging supposed false statements by Petitioner in response to the Grievance Commissioner's Request for Investigation, was dismissed by stipulation prior to the initial hearing on the matter.

After Petitioner's initial meeting with Mr. and Mrs. Patrick in December 17, 1985, over the next year or so Mr. Patrick met with Petitioner at her office on not more than two occasions. Mr. Patrick's wife was present. Petitioner testified that she had telephone conversations with Mr. Patrick's wife, but received no calls from Mr. Patrick. Mr. Patrick acknowledged that Petitioner had telephone conversations with his wife, and claimed that he made only one personal phone call to Petitioner,

which was to get his papers back in 1987. As set forth above, the Hearing Panel found that Mr. Patrick's claim that he did not get his papers back was not substantiated by the evidence, and further stated that there was no evidence that Petitioner did not return telephone calls from the Patricks (Mrs. Patrick). Throughout this time Mr. Patrick was fully aware that Petitioner had not commenced any lawsuit regarding his alleged employment rights.

In a latter part of 1986 and early 1987, at the telephone request of Mary Patrick, Petitioner attempted to set up a meeting with Chrysler to discuss the matter of rehiring Mr. Patrick, and sent a letter to Mr. Patrick dated January 2, 1986 [sic i.e., 1987, and

stipulated thereto] regarding the same and including and requesting a release form to be returned to Petitioner regarding his employment records from Chrysler (A-31). Mr. Patrick testified that his main purpose was to get his job back, that Petitioner would not get paid for that, and that there was no agreement for any fees for such work. The release form was never returned by Mr. Patrick, and in any event, Chrysler cancelled any such meeting and had apparently been hounded to death by Mrs. Patrick.

Petitioner testified that Mrs. Patrick was advised by telephone that Chrysler had cancelled any meeting, that Petitioner was at an end on the matter, and that Petitioner had done the best she could have. After this

telephone conversation, Petitioner testified there was no further communication with Mr. or Mrs. Patrick although Mr. Patrick claimed that he called Petitioner to get his papers back, the latter of which was apparently not believed by the Hearing Panel.

(Count III of the Formal Complaint, regarding the return of papers, having been dismissed for lack of evidence.)

On December 2, 1987, Tommy G. Patrick, filed a Request for Investigation with the Attorney Grievance Commission. Petitioner responded to the Request for Investigation by letter dated February 5, 1988.

The Michigan Attorney Grievance Commission filed a Formal Coimplaint against Petitioner, date May 25, 1988, alleging, among other things, as follows:

COUNT I

A. On or about December 17, 1985, [Petitioner] was retained by Tommy Patrick relative to his employment rights with Chrysler Corporation.

B. By virtue of her acceptance of the matter, [Petitioner] was charged, inter alia, with the following duties and responsibilities:

- i.) To represent her client diligently and competently;
- ii.) To further her client's lawful objectives through reasonable means permitted by law;
- iii.) To avoid prejudicing or damaging her client.

C. [Petitioner] violated the aforementioned duties and responsibilities, as follows:

- i.) After initial correspondence to Chrysler Corporation, Patrick's employer, [Petitioner] failed to attend a scheduled meeting to discuss Patrick's call-back rights with officials of Chrysler

- Corporation.;
- ii.) On or after January 2, 1986, [Petitioner] performed no further services on Patrick's behalf;
- iii.) On or after January 2, 1986, [Petitioner] failed, refused, or neglected to respond to Patrick's verbal or written communication.

D. [Petitioner's] conduct as alleged in Count I of this Formal Complaint, constitutes professional misconduct in violation of MCR 9.104(1)-(4); and Canons 1, 6, and 7 of the Code of Professional Responsibility, to wit: DR1-102(A)(1)(5)(6); DR 6-101(A)(3); and DR7-101(A)(1)-(3).

Petitioner's Response to Formal Complaint denied the allegations of violating the duties and responsibilities, and or professional misconduct, as alleged in Count I.

A hearing was subsequently held by the Oakland County Hearing Panel No. 24, at which the only witnesses

were Petitioner and Mr. Patrick even though substantially all of the contacts were with Mrs. Patrick. (Mrs. Patrick did not testify, nor was she a complainant.) As to the allegations in Count I, the Hearing Panel found that:

"The Grievance Administrator established by a preponderance of the evidence through the testimony of [Petitioner] and Complainant Tommy G. Patrick and through the above listed exhibits the following factual allegations of Count I:

1. That on or about December 17, 1985 [Petitioner] was retained by Tommy G. Patrick relative to his employment rights with Chrysler Corporation and entered into a contingent fee agreement with Mr. Patrick.

2. On or about January 2, 1986, [Petitioner] performed no further services on Mr. Patrick's behalf.

3. That on or after January 2, 1986, [Petitioner] on a number of occasions over the course of more than a year failed and neglected to satisfactorily respond to verbal communications from Mr. Patrick and/or his wife concerning the status of his matter and failed at any time to notify Mr. Patrick the [Petitioner] was no longer interested in representing Mr. Patrick."

Based on the above findings, the Hearing Panel concluded that Petitioner's conduct constituted professional misconduct as alleged in Count I of the Formal Complaint and a violation of MCR 9.1-4(2)(4) and Canon 7 or the Code of Professional Responsibility, to wit: DR 7 101(A)(2), and recommended that Petitioner be reprimanded and ordered to pay costs. Count II of the Formal Complaint was withdrawn by the Grievance Administrator prior to the

hearing, and the Hearing Panel found that the Grievance Administrator failed to establish misconduct as alleged in Count III of the Formal Complaint regarding the return of papers to Mr. Patrick. An Order of Reprimand was issued by the Attorney Discipline Board on December 2, 1988 (A-8).

Petitioner sought review of the Hearing Panel's decision by the full seven member Attorney Discipline Board. After a hearing on May 24, 1989, the Board issued its Order Affirming Hearing Panel Order of Reprimand, dated July 3, 1989, with two members dissenting stating Board Members Harrison and Keating "would reverse the hearing panel decision and dismiss the complaint for the reason that the complainant's uncorroborated testimony was especially

vague and no satisfactory explanation for the Grievance Administrator's failure to produce the complaining witness' wife who allegedly had more frequent contact with the [Petitioner]" (A-14) Petitioner then filed a Motion for Reconsideration, which the Board denied by its Order, dated January 16, 1990 (A-17) and assessed costs in the amount of \$749.73. Petitioner then filed an Application for Leave to Appeal, dated February 7, 1990, to the Michigan Supreme Court (which was filed a day late, but nonetheless heard upon Motion for Delayed Application) which was denied on May 22, 1990. (A-22). Petitioner then timely filed a Motion for Reconsideration, which was denied by the Michigan Supreme Court on July 31, 1990 (A-29) from which Petitioner makes this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

In the State of Michigan the legal profession is regulated by the Michigan Supreme Court. Although the State of Michigan may properly delegate the enforcement of attorney discipline to the judiciary, it may not sidestep constitutional guarantees. As the Supreme Court stated in Johnson v. Avery, 393 U.S. 483, 490 n.11, 89 S.Ct. 747, 751 n.11, 21 L.Ed.2d 718 (1969):

"The power of the States to control the practice of law cannot be exercised so as to abrogate federally protected rights."

In this connection, it was stated in In Re Fisher, 179 F.2d 361, 369 (7th Cir. 1950), cert. denied sub nom Kemer v. Fisher, 340 U. S. 825, 71 S.Ct. 59, 95 L.Ed 606 (1950) that

"The courts must not exercise their supervisory control in an arbitrary manner, but must show a legal discretion in the exercise thereof."

Hence, the Michigan statute, codifying judicial power to discipline attorneys, is not immune from attack.

When an individual is faced with a criminal prosecution, strick adherence to a panoply of due process protection is guaranteed. U.S. Const. Amends.

V, XIV. In other situations, the importance of the right as well as the need of the state for summary procedures to carry out particular public policies have been balanced in determining which procedural protections must apply.

See, e.g., Wilher v. Committee on Character and Fitness, 373 U.S. 96, 102, 83 S.Ct. 1175, 1179-1180, L.Ed.2d 224 (1963).

Because due process calls for such procedural protections as the particular situation demands,

"consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by government action."

Cafeteria & Restaurant Workers Union

v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748-49, 6 L.Ed.2d 1230, reh.
1 denied, 368 U.S. 869, 82 S.Ct. 22, 7 L.Ed.2d 70 (1961).

A determination of disciplinary action, capable of destroying an attorney's reputation and livelihood, can be a devastating sanction. For this reason the Supreme Court has characterized disciplinary proceedings

as being "of a quasi-criminal nature".
In Re Ruffalo, 390 U.S. 544, 551, 88
 S.Ct. 1222, 1226, 20 L.Ed.2d 117, reh.
denied, 391 U.S. 961, 88 S.Ct. 1833,
 20 L.Ed.2d 874 (1968). As the Second
 Circuit stated in Erdmann v. Stevens,
 458 F.2d 1205, 1209-10 (2d Cir.), cert.
denied, 409 U.S. 889, 93 S.Ct. 126,
 34 L.Ed.2d 147 (1972):

"[I]n our view a court's disciplinary proceeding against a member of its is comparable to a criminal rather than a civil proceeding
 . . . [I]t cannot be disputed that for most attorneys the license to practice law represents their livelihood, loss of which may be a greater punishment than a monetary fine. See Bradley v. Fisher, 80 U.S. [13 Wall.] 335, 355, 20 L.Ed. 646 (1872); Spevack v. Klein, 385 U.S. 511, 516, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967). Furthermore, disciplinary measures against an attorney, while posing a threat of incarceration only in cases of contempt, may

threaten another serious punishment--loss of professional reputation. The stigma of such a loss can harm the lawyer in his community and in his client relations as well as adversely affect his ability to carry out his professional functions" (Emphasis supplied.)

Particularly when a person's good name, integrity, reputation or honesty is at stake because of governmental action, a full and fair hearing should include, at the very least, notice of the charges or complaint, disclosure of the evidence supporting the charges, and an opportunity to be heard and to confront witnesses. See, e.g., Willner v. Committee on Character & Fitness, 373 U.S. 96, 103, 83 S.Ct. 1175, 1180, 10 L.Ed.2d 224 (1963).

As the result of state action, in contravention of the 14th Amendment

to the U.S. Constitution, Petitioner was denied due process of law by virtue of the fact that the Attorney Grievance Commission did not produce the complainant Mr. Patrick's wife, Mary Patrick, for testimony before the Oakland County Hearing Panel and for cross-examination by Petitioner.

Petitioner's good name, integrity, reputation, honesty and livelihood is at stake because of the stain cast upon her by the Attorney Grievance Commission's reprimand against her.

The rules and procedure promulgated by the Michigan Supreme Court with respect to disciplinary hearings permit very limited discovery and did not allow for pre-trial or pre-hearing deposition or interrogatory discovery procedures relative to Mr. Patrick's alleged

employment rights (with respect to which the statute of limitations had run prior to the time he first met with Petitioner), and most particularly with respect to his attempt simply to get his job back with Chrysler, regardless of his alleged "call-back" rights, much like a true criminal proceeding. See In Re Ruffalo, supra.

In a criminal or quasi-criminal proceeding it is incumbent upon the prosecutor, or this case the Michigan Attorney Grievance Commission, to produce all the relevant witnesses and evidence in the matter, whether favorable or unfavorable to its case. The testimony and cross-examination of Mary Patrick, the complainant's wife, was very relevant, and most essential to the proving or disposing of the allegations

of attorney misconduct in the Grievance Commission's Formal Complaint, since substantially all of the contact between Petitioner and Mr. Patrick was not with Mr. Patrick but rather was with his wife, Mary Patrick. The only time Mr. Patrick allegedly called Petitioner was to get his "papers" back, which the Hearing Panel apparently did not believe since Count III of the Formal Complaint regarding the return of documents to a client was found by the Hearing Panel not to be substantiated by the evidence. Nonetheless, the Grievance Commission did not produce Mrs. Patrick at the hearing.

In this respect, when Petitioner sought review of the Attorney Grievance Commission's initial Order of Reprimand (A- 8) based upon the Hearing Panel's

Report (A-1), which Order was affirmed (A-11), two members of the seven member Attorney Discipline Board

"would reverse the hearing panel decision and dismiss the complaint for the reason that the complainant's uncorroborated testimony was especially vague and no satisfactory explanation was given for the Grievance Administrator's failure to produce the complaining witness's wife who allegedly had more frequent contact with [Petitioner]. (A-14).

Similarly, when Petitioner sought review of the matter by the Michigan Supreme Court by leave to appeal, which was denied, one of the justice's dissented, stating that he "would remand this case to the Attorney Discipline Board for the taking of Mrs. Patrick's testimony."

While it is true that Petitioner could have, as opposed to should have, subpoenaed Mrs. Patrick to testify at

the hearing. a cardinal rule of the legal profession and in trial practice, albeit not codified, is that an attorney should not call a witness to testify when the attorney has not beforehand deposed the prospective witness.

During an appeal hearing before the seven member Attorney Grievance Board, Petitioner's then counsel, when asked whether he could have brought Mrs. Patrick in to testify, stated:

"MR. COLISTA: Sure, but I don't--that's not my responsibility. I don't know anything about this case in terms of what their testimony is. We don't have discovery here. I could--if I could've taken her deposition, I might have made a decision of bringing her in. But I can't do that, I'd be foolhardy to do that....."
(Record____, not yet prepared.)

Later on during the same hearing, members of the Attorney Grievance Board

commented about the same subject, as follows:

"CHAIRMAN GURWIN: Did Mr. Colista, under the rules, have the opportunity to take her deposition, or prepare for the hearing by finding out what the testimony was going to be?

MR. MUSCAT: He had the opportunity to know that she was a witness, and of course, he had the opportunity to subpoena her. If she was ill or could not appear for whatever reason, he had the opportunity to request an adjournment. None of that was done.

CHARIMAN GURWIN: Subpeonaing her without knowing what her testimony was goin to be, was not necessarily helping.

MR. HARRISON: That would get you charged with greated misconduct than was involved here."

(Record___not yet prepared.)

A lack of due process is also found with respect to the allegations in the

Grievance Commission's Formal Complaint and the findings and conclusions of the hearing panel.

The Formal Complaint, alleged that Petitioner was charged with the duties and responsibilities of (1) representing her client diligently and competently, (2) furthering her client's lawful objectives through reasonable means permitted by law, and (3) the avoidance of prejudicing or damaging her client; and that [Petitioner] violated these duties by (1) failing to attend a scheduled meeting with Chrysler Corporation, (2) failing to perform any services on Mr. Patrick's behalf on or after January 2, 1986, and (3) failing, refusing or neglecting to respond to Patrick's verbal or written communication.

The allegation that Petitioner failed to attend a meeting with Chrysler was not substantiated, but the hearing panel did find that "on or about January, 1986, [Petitioner] performed no further services on Mr. Patrick's behalf [and] that "on or after January 2, 1986, [Petitioner] on a number of occasions over the course of more than a year failed and neglected to satisfactorily respond to verbal communications from Mr. Patrick and/or his wife concerning the status of the matter and failed at any time to notify Mr. Patrick that [Petitioner] was no longer interested in representing Mr. Patrick."

The Hearing Panel's findings are clearly erroneous and further do not agree or comport with what Petitioner was charged in the Formal Complaint.

There is no question that Petitioner performed services on Mr. Patrick's behalf on or after January 2, 1986, whether these services were pursuant to the Contingent Fee Agreement or otherwise. Petitioner met with complainant and his wife on a couple of occasions during the year following January 2, 1986, inquired to a labor law firm regarding the statute of limitations (Record_____not yet prepared), had various telephone conversations with complainant's wife, and attempted to set up a meeting with Chrysler, culminating in Petitioner's letter to Mr. Patrick, which was stipulated to be dated January 2, 1987, and Chrysler's refusal to meet with the Petitioner.

As to the finding that Petitioner

failed to satisfactorily respond to verbal communications over the course of more than a year from Mr. Patrick and/or his wife, there is no question that Petitioner did not fail to respond to Mrs. Patrick's telephone calls (p. 99, 1. 19-20), or to have meetings with both Mr. Patrick and his wife. Whether or not the responses were "satisfactory" to complainant was not charged in the Formal Complaint. There was no testimony whatsoever by Mrs. Patrick, who was not named as a complainant and did not appear as a witness, and Mr. Patrick's testimony as to what his wife may or may not have said or heard is pure, unsubstantiated hearsay.

In addition to the fact that the findings are not substantiated by a

preponderance of the evidence, the findings constitute a new charge against Petitioner that was not brought in the Formal Complaint, which constitutes a denial of due process to Petitioner. In Re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed.2d 117, reh denied, 391 U.S. 961 (1968).

Furthermore, Petitioner was charged and disciplined with respect to a non-viable matter, with respect to which the complainant did not and could not suffer any prejudice or damage. At the time Petitioner first met with the Patricks, the applicable statutes of limitations had run with respect to Mr. Patrick's alleged claims against Chrysler or the UAW.

Mr. Patrick's alleged claim against Chrysler related to his "call-back"

rights under the UAW Collective Bargaining Agreement with Chrysler by virtue of his layoff from Chrysler in 1979, and failure to be recalled by Chrysler in 1982 or 1983. To the extent that Mr. Patrick had a claim against Chrysler for violation of the Collective Bargaining Agreement with the UAW, Mr. Patrick's claim would be governed by section 301 of the federal Labor Management Relations Act, 29 U.S.C. section 185 (1947) which allows individuals to sue their employers or their union for a violation of the collective bargaining agreement between the employer and the representative labor organization. See Clayton v. International Union, UAW, 451 U.S. 679, 101 S.Ct. 2088, 68 L.Ed.2d 538 (1981). However, the statute of limitations

for claims under Section 301 of the Labor Management Relations Act is six (6) months. National Labor Relations Act, section 10(b) as amended, 29 U.S.C. section 160(b); Romero v. Paragon Steel, 129 Mich. App. 566, 341 N.W.2d 546 (1983).

Accordingly, the statute of limitations relative to Mr. Patrick's claim against Chrysler or the UAW would have run at least a year or longer before he ever met with Petitioner regarding the same on December 17, 1985. (Mr. Patrick testified that when he was eventually rehired by Chrysler on June 10, 1985, and laid off some six weeks later, that he did not have any call-back rights at those times. (Record _____ not yet prepared.)

No lawsuit was possible. Mr. Patrick had all his papers back from the very first time he met with Petitioner (the hearing panel didn't believe that Mr. Patrick had not received his papers back since Count III of the Formal Complaint was dismissed as unsubstantiated). Petitioner did all she could for Mr. and Mrs. Patrick. Petitioner returned all of Mrs. Patricks telephone calls, met with Mr. and Mrs. Patrick three times and Chrysler refused to meet with Petitioner. Petitioner received no fees of other monies from the Patricks, and Mr. Patrick knew that his call-back rights were not available to him at least six months prior to the time he first met with Petitioner.

Petitioner could not neglect a non-viable matter, and the action of the Michigan Attorney Grievance Commission and Attorney Grievance Board denied Petitioner due process and equal protection under the 14th Amendment.

Finally, Petitioner submits that the disciplinary rules, adopted by the Michigan supreme court pursuant to the authority granted to it by the State of Michigan, with respect to which Petitioner was found to have violated and reprimanded therefore, denied Petitioner due process and equal protection of law because such rules are void for vagueness and uncertainty, and were applied by the Michigan Attorney Grievance Commission and the Attorney Discipline Board in an arbitrary and capricious manner.

Due process requires certainty, clearness, concreteness and definiteness, such that a law, rule or regulation provides adequate notice of what conduct it requires or proscribes and further, to provide for uniform application of the law, its fair administration, and, more particularly to provide a means by which a violation of a law, rule or regulation may be fairly and no-arbitrarily determined, and to prevent arbitrariness or discrimination in its enforcement.

Petitioner still does not know what she did wrong. The Notice of Reprimand (A-24) states that Petitioner

"....was retained in an employment rights matter in December 1985 but performed no further services on her client's behalf after January 2, 1986, failed to advise her client that she would take no further action

on his behalf and failed, for approximately one year, to respond satisfactorily to her client's verbal communications. The panel concluded that the respondent's conduct was in violation of MCR 9.104(2,4) and Canon 7 of the Code of Professional Responsibility, DR 7-101(A)(2)."

Other than whether the client was "satisfied," the record shows contrary to the findings of the hearing panel, that Petitioner did meet with Mr. and Mrs. Patrick during 1986 on two occasions after their first meeting, did return Mrs. Patrick's telephone calls during that year, did in 1986 call Chrysler to attempt to set up a meeting which Chrysler refused to do, notwithstanding that Mr. Patrick's claims were non-viable and barred by the statute of limitations before he met with Petitioner.

There is nothing in the disciplinary

rules that requires an attorney to "satisfy" a client. What may satisfy one client may not satisfy another, under the exact same circumstances, and what a client may hear from an attorney may not make them or the client's wife happy, i.e. satisfied, even though the attorney has done everything reasonably possible, such as was the case with Petitioner. Mr. Patrick paid no money to Petitioner, and further suffered no harm or prejudice to his non-viable claim. The fact that he did not have a viable claim was certainly not Petitioner's fault or anything within her control. Thus, the disciplinary rules have been applied to Petitioner, a female, sole practitioner, in an arbitrary and capricious and discriminatory manner

and based upon race, ethnic background, gender, and age bias.

The Michigan Grievance Commission has within the past year or so come under extreme public scrutiny and criticism for the handling or mishandling of its affairs. Such criticism included the alleged favoritism to "prominent", well-known attorneys who were subject to investigation by the Grievance Commission (one of whom is now president of the State Bar of Michigan). The illegal destruction of files relative to the dismissal of an investigation as to those persons, and failure to investigate certain matters involving an appellate court judge who committed suicide shortly after he was caught red-handed taking a bribe. Within the past several months, the Grievance

Commissioner resigned as did the Chariman of the seven member Attorney Discipline Board, (and another member of the Board had previously committed suicide after writing a critical letter, unsent but discovered after his death, about the Grievance Commission), after a special report was issued by a former Michigan Supreme Court justice, who was appointed as special counsel to review the practices and procedurés of the Attorney Grievance Commission after the publication of a series of articles in the Detroit News that, in their editorial content, sharply attacked the integrity of Michigan's attorney discipline system. In this connection, Petitioner was denied the ability to see the Grievance Commission file on her case and certain evidence which

was introduced and referred to on the record before the hearing panel was lost or destroyed by the Grievance Commission. Such evidence was essential to Petitioner in making her appeal, and in fact proving misconduct on the part of the Grievance Commission in proceeding with the investigation. Accordingly, Petitioner submits that the disciplinary rules were applied against her in an arbitrary capricious and discriminatory manner, denying her due process and equal protection under the law.

CONCLUSION

For the foregoing reasons,
Petitioner submits that the Writ of
Certiorari should be granted.

Respectively submitted,

Enid R. Brahms
Enid R. Brahms
In Pro Per
20 S. Gratiot, Ste.
200
Mt. Clemens, MI 48043
(313) 769-2039

APPENDIX

A-1

STATE OF MICHIGAN

ATTORNEY DISCIPLINE BOARD

FILED
1988 DEC -2

MICHAEL ALAN SCHWARTZ,
Grievance Administrator,
State of Michigan,
Attorney Grievance Commission

Petitioner

v

ADB Case
No. 123-88

ENID R. BRAHMS (P34035)

Respondent

REPORT OF OAKLAND COUNTY
HEARING PANEL NO. 24

PRESENT: Mark E. Reizen,
Chairperson
Harvey I. Way, Member
Cyril V. Weiner, Member

PROCEEDINGS

The hearing panel files this report
of the hearing convened on September
26, 1988 at 3000 Town Center, Suite
15600, Southfield, Michigan, the office
of Hearing Panel Chairman Mark E. Reizen.

The Respondent was present and represented by her counsel, F. Philip Colista. The Grievance Administrator was represented by counsel, Martha Moore. Transmitted herewith is a certified transcript of that hearing.

RECORD

The following pleadings were filed in this matter:

1. Formal Complaint, ADB Case No. 123-88, filed May 25, 1988.
2. Discovery Demand, filed May 25, 1988.
3. Notice of Hearing, dated May 26, 1988.
4. Notice of Substitution of Panelist, dated May 31, 1988.
5. Notice of Adjournment With New Date, dated June 1, 1988.

6. Response to Formal Complaint, filed June 21, 1988 and Proof of Service.

7. Response to Formal Complaint, filed June 21, 1988 and Proof of Service.

8. Respondent's Motion to Adjourn the Hearing and Proof of Service, dated July 18, 1988.

9. Order of Adjournment, dated August 8, 1988.

10. Notice of Respondent's Character Witnesses and Proof of Service, dated August 31, 1988.

The following exhibits were introduced and admitted during the hearing by the Grievance Administrator.

1. Contingent Fee Agreement dated December 17, 1985.

2. Letter from Respondent to Mr. Tommy G. Patrick, dated January 2, 1986.

The following exhibit was introduced and admitted by Respondent:

3. Envelope and contents returned to Mr. Patrick by Respondent.

FINDINGS AND CONCLUSIONS

At the outset of the hearing the Grievance Administrator agreed to withdraw Count II of the Formal Complaint and proceeded to hearing on Counts I and III.

The Grievance Administrator established by a preponderance of the evidence through the testimony of Respondent and Complainant Tommy G. Patrick and through the¹ above listed exhibits the following factual allegations of Count I:

1. That on or about December 17, 1985

1985 Respondent was retained by Tommy G. Patrick relative to his employment rights with Chrysler Corporation and entered into a contingent fee agreement with Mr. Patrick.

2. On or after January 2, 1986, Respondent performed no further services on Mr. Patrick's behalf.

3. That on or after January 2, 1986, Respondent on a number of occasions over the course of more than a year failed and neglected to satisfactorily respond to verbal communications from Mr. Patrick and/or his wife concerning the status of his matter and failed at any time to notify Mr. Patrick that Respondent was no longer interested in representing Mr. Patrick.

DISCUSSION

Based upon these findings the Panel concludes that Respondent's conduct constitutes professional misconduct as alleged in Count I of the Formal Complaint and a violation of MCR 9.104(2)(4) and Canon 7 of the Code of Professional Responsibility, to wit: Dr 7-101(A)(2).

The Panel further finds that the Grievance Administrator has failed to establish the violation alleged in Count III of the Formal Complaint by a preponderance of the evidence, and therefore such Count is dismissed.

Respondent agreed to waive her right to a second hearing on the nature of the discipline to be imposed, leaving

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that matter exclusively to the discretion of the Panel, in the event it concluded that a violation had occurred.

PREVIOUS DISCIPLINE

No evidence of previous discipline was submitted to the Panel.

ORDER OF DISCIPLINE AND
PAYMENT OF COSTS

Based on its finding that a violation as alleged in Count I of the Formal Complaint has been proved by a preponderance of the evidence the Panel recommends that Respondent be reprimanded and ordered to pay the costs of this proceedings.

STATEMENT OF COSTS

Attorney Grievance Commission	\$59.46
Attorney Discipline Board	115.00
Total	\$688.39

MARK E. REIZEN,
Chairman
Oakland County Hearing
Panel No. 24

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STATE OF MICHIGAN

ATTORNEY DISCIPLINE BOARD

FILED

1988 DEC -2

MICHAEL ALAN SCHWARTZ,
Grievance Administrator,
State of Michigan
Attorney Greivance Commission,

Petitioner,

v.

ADB 123-88

Enid R. Brahms, P 34035

Respondent.

ORDER OF REPRIMAND

Considered by Attorney Discipline
Board
Oakland Hearing Panel #24

PRESENT: Mark E. Reizen, Chairman
Harvey I. Wax, Member
Cyril V. Weiner, Member

This matter having come before
the panel upon the filing of Formal
Complaint ADB 123-88 charging that
respondent Enid R. Brahms has committed

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acts of professional misconduct warranting discipline, and the panel having held a hearing and having filed its report containing its findings and conclusions that as to Count I, misconduct has been established by a preponderance of the evidence, as to Count II, the Grievance Administrator with that count, as to Count III, the panel found that the Grievance Administrator had failed to establish misconduct, and the panel being otherwise fully advised;

NOW THEREFORE,

IT IS ORDERED that the respondent Enid R. Brahms shall be REPRIMANDED.

IT IS FURTHER ORDERED that Respondent shall, within 120 days of the effective date of this order, pay

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costs in the amount of \$688.39. Cost payment shall be made payable to the State Bar of Michigan but submitted to the Attorney Discipline Board [333 W. Fort Street, Suite 1260, Detroit, MI 48226] for proper crediting. Failure to reimburse the State Bar of Michigan within the time prescribed will result in Respondent's automatic suspension from the practice of law in accordance with MCR 9.128. (eff. June 1, 1987)

ATTORNEY DISCIPLINE BOARD
Oakland County Hearing
Panel #24

By (Signature)
Mark E. Reizen,
Chairman

Date of Mailing: DEC 02 1988

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STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

FILED
1989 JUL -3

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

ADB 123-88

Enid R. Brahms, P 34035,

Respondent/Appellant.

ORDER AFFIRMING HEARING PANEL
ORDER OF REPRIMAND

Considered by the Attorney
Discipline Board
One Kennedy Square, Suite 1910
Detroit, MI

PRESENT: Hanley M. Gurwin,
Chairman
Remona A. Green,
Vice-Chairman
Theodore P. Zegouras,
Secretary
Hon. Martin M. Doctoroff,
Member
Robert S. Harrison, Member
Patrick J. Keating, Member

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The Attorney Discipline Board has considered the Petition for Review filed by the respondent seeking reversal of the hearing panel Order of Reprimand filed Decembere 2, 1988. The Board has considered the whole record together with the pleadings and briefs of the parties and the arguments presented at proceedings conducted in accordance with MCR 9.118 on May 24, 1989. /

NOW THEREFORE,

IT IS ORDERED that hearing panel Order of Reprimand dated December 2, 1988 is AFFIRMED for the reason that the Board finds proper evidentiary support in the record for the panel findings. The Board declines to substitute its own findings where the panel has resolved the issue of credibility.

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IT IS FURTHER ORDERED that

Respondent shall, pay costs in the amount of \$688.39 as ordered by the hearing panel together with the costs incurred by the Attorney Discipline Board in these review proceedings in the amount of \$61.34 for a total amount due of \$749.73. Such costs shall be paid as follows:

Three Hundred Seventy (\$375.00) Dollars to be paid on or before September 1, 1989 and the remainder Three Hundred Seventy-four and 73/100 (\$373.73) Dollars to be paid on or before November 1, 1989.

Cost payment shall be made payable to the State Bar of Michigan but submitted to the Attorney Discipline Board [One Kennedy Square, Suite 1910, Detroit, MI 48226] for proper crediting. Failure to reimburse the State Bar of Michigan within the time prescribed will result

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in Respondent's automatic suspension
from the practice of law in accordance
with MCR 9.128. (eff. June 1, 1987)

ATTORNEY DISCIPLINE BOARD

By (Signature)

Hanley M. Gurwin,
Chairman

Board Chairman Gurwin, Vice-Chairman
Green and Members Doctoroff Hotchkiss
and Zegouras concur in this decision.

Board Members Harrison and Keating "would
reverse the hearing panel decision and
dismiss the complaint for the reason
that the complainant's uncorroborated
testimony was especially vague and no
satisfactory explanation was given for
the Grievance Administrator's failure
to produce the complaining witnesse's

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(sic.) wife who allegedly had more
frequent contact with the respondent."

DATE OF MAILING: JUL -3 1989

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STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

FILED
1990 JAN 16

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

ADB 123-88

Enid R. Brahms, P 34035,

Respondent/Appellant.

ORDER DENYING RESPONDENT'S MOTION
FOR RECONSIDERATION

Considered by the Attorney Discipline
Board
One Kennedy Square, Suite 1910
Detroit, MI

PRESENT: Ramona A. Green, Chairperson

On July 3, 1989, the Attorney
Discipline Board entered an order
affirming hearing panel order of
reprimand in this case. The effective

date of that order was delayed by a subsequent order of the Board dated July 24, 1989 staying these proceedings at the respondent's request.

Respondent's Motion for Reconsideration was filed August 24, 1989 and the Board has granted the respondent's requests for extensions of time to file a brief in its orders of October 31, 1989 and December 12, 1989.

Based upon its review of the whole record in this case, the Board is persuaded that the findings and conclusions of the hearing panel have evidentiary support and the Board is not persuaded that its previous order affirming the panel's decision was erroneous.

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The Board further concludes that the respondent has failed to establish a denial of due process in these proceedings.

NOW, THEREFORE,

IT IS ORDERED that the respondent's motion for reconsideration is DENIED. The hearing panel order of reprimand dated December 2, 1988 is AFFIRMED in all respects and shall become EFFECTIVE FEBRUARY 7, 1990.

IT IS FURTHER ORDERED that total costs in the amount of \$749.73, assessed in the Board's Order of July 3, 1989, shall be paid as follows:

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Three-hundred seventy-five (\$375.00)
Dollars to be paid on or before May
1, 1990, and;

The balance of Three hundred
seventy-four and 73/100 (\$374.73) Dollars
to be paid on or before August 1, 1990.

Cost payment shall be made payable to
the State Bar of Michigan but submitted
to the Attorney Discipline Board [One
Kennedy Square, Suite 1910, Detroit,
MI] for proper crediting. Failure to
reimburse the State Bar of Michigan
within the time prescribed, will result
in respondent's automatic suspension
in accordance with MCR 9.128 (eff. June
1, 1987).

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ATTORNEY DISCIPLINE BOARD

By: _____
Ramona A. Green
Chairperson

DATE OF MAILING: JAN 16 1990

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ORDER

Entered: May 22, 1990

Michigan Supreme Court
Lansing, Michigan

88498 & (3)

GRIEVANCE ADMINISTRATOR,
STATE OF MICHIGAN ATTORNEY
GRIEVANCE COMMISSION,

Petitioner-Appellee,

v

ENID R. BRAHMS,

SC: 88498
ADB: 123-88
AGC: DP 113/88

Respondent-Appellant

On order of the Court, the delayed application for leave to appeal and the motion for stay pending appeal are considered. The delayed application for leave to appeal is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for stay also is DENIED.

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Levin, J., would remand this case
to the Attorney Discipline Board for
the taking of Mrs. Patrick's testimony.

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STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

NOTICE OF REPRIMAND

ADB 123-88

Enid R. Brahms, P34035, Mt. Clemens,
MI by the Attorney Discipline Board
affirming hearing panel Order of
Discipline.

- 1.) Reprimand;
- 2.) Effective May 22, 1990.

The hearing panel determined that
the respondent was retained in an
employment rights matter in December
1985 but performed no further services
on her client's behalf after January
2, 1986, failed to advise her client
that she would take no further action
on his behalf and failed, for
approximately one year, to respond

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satisfactorily to her client's verbal communications. The panel concluded that the respondent's conduct was in violation of MCR 9.104(2,4) and Canon 7 or the Code of Professional Responsibility, DR 7-101(A)(2).

Upon consideration of the respondent's petition for review, the Attorney Discipline affirmed the hearing panel's decision. The respondent's application for leave to appeal was denied by the Supreme Court in an order dated May 22, 1990. Costs were assessed in the amount of \$749.75.

(signature)
John F. VanBolt

Dated: MAY 31 1990

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MAY 31 1990

TO:

Hon. Julian A. Cook, Jr., Chief Judge,
U. S. District Court, Eastern District

Hon. Douglas W. Hillman, Chief Judge,
U. S. District Court, Western District

Hon. Dalton A. Roberson, Chief Judge,
Recorder's Court, City of Detroit

Chief Judge Macomb Circuit Court

Clerk, Macomb County

Probate Register, Macomb County
Probate Court

Corbin R. Davis, Clerk, Michigan Supreme
Court, Lansing, Michigan

Frank Lorson, Deputy Clerk, U. S. Supreme
Court, Washington, D. C.

Leonard Green, Clerk, U. S. Sixth Court
of Appeals, Cincinnati, Ohio

Michael Frank, Executive Director, State
Bar of Michigan, Lansing, Michigan

Douglas L. Sweet, Director of Research
& Development, State Bar of Michigan

Thomas Farrell, Public Information
Officer, Michigan Supreme Court, Lansing

Roger S. Lenaert, Executive Director,
Detroit Bar Association, Detroit,
Michigan

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Brenda Hampton, Michigan Appellate
Assigned Counsel System, Lansing,
Michigan

Robert Schweikart, Mediation Tribunal
Association, Detroit, Michigan

Loretta DiMaggio, Supervisor, 36th
District Court, Detroit, Michigan

Toni Brown, Administrative Secretary,
ABA (enc. National Data Forms) Chicago

Nancy Bozzo, State Bar of Michigan,
Lansing, Michigan

Dan Sharp, Editor, Michigan Lawyers
Weekly, Lansing, Michigan

Deborah J. Gaskin, Grievance
Administrator, Attorney Grievance
Commission, Detroit, Michigan

Nancy Brown, Editor, Michigan Bar
Journal, State Bar of Michigan, Lansing,
MI

Betty Tower, Director, Budget and
Management, Wayne County Juvenile Court,
Michigan

Nicholas Volino, Esq., Lawyers Title
Insurance Corporation, Troy, Michigan

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RE: Brahms, Enid R., P34035, ADB 123-88

Enclosed please find the Attorney Discipline Board Notice(s)(Order(s) and Opinion(s), if filed regarding the above captioned matter. Please contact this office if you should have any questions.

Very truly yours

John F. VanBolt
Executive Director

cc: Respondent

Respondent's Counsel (if applicable)

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ORDER

Entered: July 31, 1990

Michigan Supreme Court
Lansing, Michigan

88498 (9) (10) (11)

GRIEVANCE ADMINISTRATOR, STATE OF
MICHIGAN ATTORNEY GRIEVANCE
COMMISSION,

Petitioner-Appellee,

v

SC: 88498
ADB: 123-88
AGC: DP 113/88

ENID R. BRAHMS,

Respondent-Appellant.

On order of the Court, the motion for immediate consideration, the motion for reconsideration of this Court's order of May 22, 1990, and the motion for stay of proceedings are considered. The motion for immediate consideration is GRANTED. The motion for reconsideration is DENIED, because it

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does not appear that the order was
entered erroneously. The motion for
stay is DENIED as moot.

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January 2, 1986

Mr. Tommy Patrick
23310 Shepherd Lane
Mt. Clemens, MI 48045

Dear Mr. Patrick:

I have arranged to meet at Chrysler Corporation to obtain records relevant to your employment and that it is necessary for me to have the enclosed release signed and returned to me.

I will let you know the outcome and what will be the next step.

I will let you know when the meeting has been scheduled for and whether or not it will be necessary for you to appear on that date.

As you are aware, I have dealt in the matter almost exclusively with your wife with your permission. However, when we begin to meet with Chrysler,

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it will be necessary for you to become involved personally.

I hope you had a nice holiday.

Very truly yours,

(Signature)

Enid R. Brahms

P.S. You can reach me or my secretary at the above number. I will be meeting clients, when necessary at a new office in Mt. Clemens. I will let you know the new address next week. Please use the Ann Arbor address for all correspondence in any event. Thank you.

CONTINGENT FEE AGREEMENT

The undersigned part(y)(ies)
herewith retain(s) the law firm of ENID
R. BRAHMS, P. C. to prosecute on behalf
of the undersigned a claim which the
undersigned assert(s) against _____
_____ which arises out of
an injury sustained on or about _____
_____.

(Handwritten: "relative to employment
rights")

1. It is agreed between the
part(y)(ies) that the attorneys shall
have a lien on this cause of action
for services rendered and to be rendered
therein, and that the attorneys shall
receive no fee unless the attorneys
are successful in obtaining payment
on the claim either by way of settlement
or judgment, in which event the attorneys

are to be compensated in the manner set forth below.

2. The attorney and client hereby agree to a contingent fee of one third (1/3) of the entire recovery, after costs are deducted.

3. The client(s) further (has) (have) been advised and (does)(do) agree and acknowledge that the method of compensation, is as set forth above.

4. By signing this Contingent Fee Agreement the undersigned client(s) acknowledge(s) that (s)he (they) have been informed that such claims are sometimes handled other than by contingency fee agreement, in which event the attorneys would be paid on an agreed hourly or daily basis for the reasonable value of their services, but that the said client(s) elect(s)

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to enter into this contingency fee agreement.

5. The client(s) also acknowledge(s) receipt of a copy of this agreement.

Dated: (Handwritten: "December 17, 1985")

Client(s)

BY: (Signed: "Tommy Patrick")

ENID R. BRAHMS, P.C.

(Signed: "Enid R. Brahms")



Case No. 90-706

NOV 27 1990

JOSEPH F. SPANIOL, JR.
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

ENID R. BRAHMS, Petitioner,

v.

MICHAEL ALAN SCHWARTZ, Grievance
Administrator, State of Michigan
Attorney Grievance Commission,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
MICHIGAN SUPREME COURT

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

JANE SHALLAL
Attorney at Law
243 W. Congress, Ste 256
Detroit, MI 48226
(313) 961-6585

Attorney for Respondent



Case No. 90-706

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990

ENID R. BRAHMS, Petitioner,

v.

MICHAEL ALAN SCHWARTZ, Grievance
Administrator, State of Michigan
Attorney Grievance Commission,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
MICHIGAN SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

JANE SHALLAL
Attorney at Law
243 W. Congress, Ste 256
Detroit, MI 48226
(313) 961-6585

Attorney for Respondent

IDENTIFICATION OF PARTIES

Petitioner, Enid R. Brahms is a Michigan attorney, admitted to the Michigan Bar on May 26, 1982.

The Respondent is the prosecutorial arm of the Michigan Supreme Court relative to the discharge of said Court's constitutional responsibility to supervise and discipline Michigan attorneys.

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RESPONDENT'S STATEMENT
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Petitioner did not raise the presently alleged federal questions at the trial level before the hearing panel, nor did the Petitioner timely raise the federal questions during the first appellate stage before the State of Michigan Attorney Discipline Board. Petitioner's vague appeal to and assertion of constitutional principles in the Michigan Supreme Court do not preserve her equal protection and due process claims.

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TABLE OF AUTHORITIES

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CASES

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100 L. Ed. 2d 62 (1988)....15,16,17,18

RESPONDENT'S STATEMENT OF THE CASE

On May 25, 1988, Petitioner was charged in a Formal Complaint by the Michigan Attorney Grievance Commission with having neglected a legal matter that was entrusted to her. The disciplinary proceedings against the Petitioner were tried before a panel of three attorneys appointed to hear such matters by the State of Michigan, Attorney Discipline Board. At the trial, Petitioner's client, Mr. Tommy Patrick, testified that he sought the legal services of Petitioner on December 17, 1985, to represent him in a lawsuit against the United Auto Workers. Mr. Patrick testified that

the Petitioner agreed to represent him, and that he had never been informed by the Petitioner that she would not handle this legal matter for him. (Hearing Transcript, September 6, 1988, pages 18-19, hereinafter referred to HT 18-19). The Petitioner gave Mr. Patrick a clear impression that she was would pursue the legal matter on his behalf. (HT. 40)

Mr. Patrick testified further that he had never informed the Petitioner that he did not wish to proceed with litigation against Chrysler Corporation, nor had he ever heard his wife so inform the Petitioner. (HT. 41). When questioned as to what he

thought the Petitioner was doing on his legal matter, between the initial meeting on December 17, 1985, and the time he filed his Request for Investigation with the State of Michigan, Attorney Grievance Commission on December 2, 1987, Mr. Patrick testified that "I thought she was trying to get some information. Every time I called her, she was telling me she was working on it. That's what she said." (HT. 57, lines 19-22). The evidence disclosed that no action was taken by the Petitioner in relation to Mr. Patrick's case during that time.

Petitioner's testimony was substantially different from that of Mr. Patrick. Petitioner

testified that she had informed Mr. Patrick, at the initial meeting, that she would not sue a union. (HT.8). Petitioner also testified that her representation of Mr. Patrick ended shortly after the initial meeting in December 1985, after she had been informed by Mr. Patrick's wife that the Patricks did not wish her to commence litigation against Chrysler Corporation. (HT. 71-72). Petitioner admitted that she had never advised her client in writing that her representation had ended and that there was nothing further for her to do. (HT. 79). The Hearing Panel determined that the Petitioner had been retained by Mr.

Patrick to represent him in an employment rights matter in December 1985, but performed no further services on her client's behalf after January 1986, and failed to advise her client that she would take no further action on his behalf. The Hearing Panel concluded that the Petitioner's conduct constituted professional misconduct warranting a reprimand. The Petitioner did not raise any federal question at any stage in the proceedings before the Hearing Panel.

On December 22, 1988, Petitioner, filed a Petition For Review of the Hearing Panel's Order to the State of Michigan, Attorney Discipline Board.

The Petitioner did not raise any federal question in her Petition For Review or in her Brief In Support Of Petition For Review. In an order dated July 3, 1989, the Attorney Discipline Board affirmed the Hearing Panel's finding that the Petitioner had engaged in professional misconduct. On August 24, 1989, the Petitioner filed a Motion For Reconsideration with the State of Michigan Attorney Discipline Board, wherein she asserted approximately forty-six new grounds for reversal of the decision in the case.

The Attorney Discipline Board denied Petitioner's Motion For Reconsideration, ruling that the record

contained sufficient evidentiary support for the findings and conclusions of the Hearing Panel. The Board further stated in its order that the Petitioner, had failed to establish a denial of due process in the proceedings. Petitioner filed an Application For Leave To Appeal with the Michigan Supreme Court, but the Supreme Court Clerk's Office advised the Petitioner that her application was not timely filed. Subsequently, Petitioner refiled the Application For Leave To Appeal. On May 22, 1990, the Michigan Supreme Court denied the Petitioner's "Delayed" Application For Leave To Appeal stating that they were

not persuaded that the questions presented should be reviewed by the court. The Petitioner then filed a Motion For Reconsideration in the Michigan Supreme Court which was also denied by order dated July 31, 1990.

SUMMARY OF ARGUMENT

Petitioner did not raise the presently alleged federal questions at the trial level before the hearing panel, nor did the Petitioner timely raise the federal questions during the first appellate stage before the State of Michigan Attorney Discipline Board. Petitioner's vague appeal to and

assertion of constitutional principles in the Michigan Supreme Court do not preserve her equal protection and due process claims.

ARGUMENT

Petitioner failed to properly raise and preserve any federal question at the trial before the Hearing Panel of the State of Michigan Attorney Discipline Board. Petitioner also failed to raise any federal questions, when she first presented her appeal of right, to the State of Michigan Attorney Discipline Board. After the Attorney Discipline Board affirmed the

decision of the Hearing Panel, Petitioner filed a Motion For Reconsideration.

In her Motion For Reconsideration, the Petitioner alleged forty-six reasons why the State of Michigan Attorney Discipline Board should reconsider its decision to affirm the decision of the Hearing Panel. The Petitioner merely recited that she was denied due process and equal protection of law without detailing any facts or legal authority. The Motion For Reconsideration simply alleged:

29. The statute and rules under which the Board and panel proceeded are unconstitutional.

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40. Respondent has been deprived of due process of law.

41. Respondent has been denied equal protection of the law. (Petitioner's Motion For Reconsideration, dated August 24, 1989).

The Petitioner then requested, and was granted, additional time by the State of Michigan Attorney Discipline Board, to file an Amended Motion For Reconsideration. On November 27, 1989, Petitioner filed her First Amended Motion For Reconsideration and Request For Oral Argument (hereinafter referred to as First Amended Motion-ADB). The First Amended Motion-ADB, contained seventy-six numbered paragraphs, where Petitioner again made a vague appeal to

constitutional principles. The pertinent paragraphs are as follows:

* * *

37. By the failure of Mrs. Patrick to be produced as a witness, Respondent was denied due process of law.

* * *

62. The statute and rules under which the Board and panel proceeded are unconstitutional.

* * *

70. Respondent has been deprived of due process of law. (First Amended Motion-ADB)

Petitioner also filed with the State of Michigan Attorney Discipline Board, her First Brief In Support Of Motion and a First Amended Brief In

Support Of Motion. The Petitioner failed to make any specific reference in either of these documents, to any particular federal statute or any portion of the Constitution upon which she was alleging her federal claim. The State of Michigan Attorney Discipline Board entered its Order Denying Respondent's Motion For Reconsideration on January 16, 1990, and it was determined that the Petitioner had failed to establish a denial of her due process rights.

In her Application For Leave To Appeal, filed with the Michigan Supreme Court, Petitioner again made vague references to alleged denial of her due

process rights. For the first time in these proceedings, Petitioner also alleged "failure on the part of the appellee or the Grievance Board to publish opinions constitutes a clear denial of due process and is in violation of the equal protection clause since with no specific guidelines, certain groups can be singled out for special treatment with respect to grievance procedures."

(Application For Leave To Appeal, page 17). However, Petitioner did not further delineate or explain her position.

The Michigan Supreme Court denied Petitioner's Application For Leave To

Appeal because they were not persuaded that the questions presented should be reviewed. Petitioner then filed a Motion For Reconsideration in the Michigan Supreme Court which was also denied.

In Banker's Life and Casualty Company v Crenshaw, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed. 2d 62 (1988) the appellant sought review from this Honorable Court, of the propriety of a punitive damage award entered against it in Mississippi State Courts, and in addition sought to challenge the constitutionality of a Mississippi penalty statute. The appellant had not raised any federal questions in the

state court proceedings, until such time as he filed a Petition For Rehearing with the Mississippi Supreme Court. In determining whether or not to grant certiorari, this Court noted that the appellant had merely alleged that the punitive damage award entered against it "was clearly excessive, and not reasonably related to any legitimate purpose, constitutes excessive fine, and violates constitutional principles." 486 U.S. at 77, 108 S.Ct. at 1650. This Court went on to state: "The vague appeal to constitutional principles does not preserve appellant's Contract Clause or due process claim. A party may not

preserve a constitutional challenge by generally invoking the Constitution in state court and awaiting review in this Court to specify the constitutional provision it is relying upon." 486 U.S. at 77, 108 S.Ct. at 1650.

In the case at bar, the Petitioner has made vague references to alleged violations of her due process and equal protection rights. No specific reference to any portion of the United States Constitution or any federal statute was raised in the state court proceedings. The Petitioner inadequately pleaded constitutional principles in her Motion For Reconsideration before the Michigan Supreme Court.

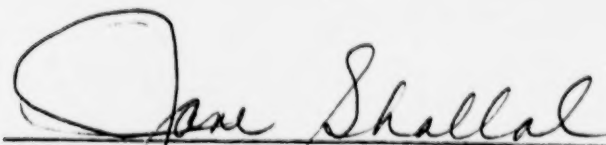
The Petitioner's vague allegations of and appeal to constitutional issues does not preserve her equal protection and due process claims. Banker's Life and Casualty Company, 108 S. Ct. at 1650.

CONCLUSION

For the foregoing reasons,
Respondent respectfully requests this
Honorable Court deny Petitioner's Writ
for Certiorari to the Michigan Supreme
Court.

Dated: Detroit, Michigan
November 27, 1990

FRANK J. GRECO
Acting Grievance Administrator
Michigan Attorney Grievance Commission

A handwritten signature in cursive script, appearing to read "Jane Shallal", is written over a horizontal line.

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